

Van Schaik



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** The Taylor Group

**File:** B-234294

**Date:** May 9, 1989

### DIGEST

1. Contention that protester should have received award because its bid was low for base period is without merit where solicitation stated that award would be based on evaluation of base and option prices.

2. Bid for maintenance services was not mathematically or materially unbalanced where difference between per month prices for base period and option month prices was not extreme (less than 20 percent), price for base period reasonably included costs for start-up and equipment and bid will become low during performance of first option period which government reasonably expected to, and, in fact, did exercise.

### DECISION

The Taylor Group protests the award of a contract to Crawford Technical Services, Inc., under invitation for bids (IFB) No. F02600-89-B-0013 (IFB No. 0013), issued by the Air Force for base maintenance services at Williams Air Force Base. We dismiss the protest in part and deny it in part.

Taylor was the incumbent contractor performing the maintenance services called for under IFB No. 0013. According to the Air Force, after it exercised all options under Taylor's previous contract, it issued IFB No. F02600-88-B-0018 (IFB No. 0018) in order to fill its long-term needs for the maintenance services. That solicitation included a base period of 1 year and 4 option years.

The Air Force explains that although bid opening occurred on IFB No. 0018 on January 13, award could not immediately be made because mistakes were suspected in the low bids and because there were questions about the responsibility of the low bidders. The contracting officer determined at that

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time that more than 3 months would be required to award a contract under IFB No. 0018.

In order to assure continuing performance of the maintenance services until the long-term contract could be awarded, the Air Force issued IFB No. 0013 on January 26.

Under IFB No. 0013 the contractor was to provide all labor, supervision, equipment and transportation to meet the base's requirements for grounds maintenance, pest management, water and waste water plant operations and vehicle/taxi operations. The solicitation bid schedule indicated that bids should be submitted for a base period of performance from February 1, 1989 through April 30, 1989 and for 3 option periods for the same services in May, June and July 1989. Also, under section F of the solicitation, the period of performance of the contract was stated to be February 1, 1989 until April 30, 1989, "unless sooner terminated under the terms of the contract." The solicitation also indicated in section M that award was to be made to the "responsible and responsive bidder whose price is most advantageous to the Government, including all options."

Crawford and Taylor submitted responsive bids which were priced as follows:

	Base (3 months)	Option 1 May	Option 2 June	Option 3 July	Total (Base & Options)
Crawford	\$333,935	89,416	92,422	99,277	615,051
Taylor	318,000	106,000	106,000	106,000	636,000

The Air Force awarded a contract for the base period to Crawford on January 27, at a price of \$333,935.

Taylor protested to this Office on January 30 after it filed a protest with the Air Force on January 27. The Air Force decided to allow performance of the contract notwithstanding the protest based on a determination that urgent and compelling circumstances significantly affecting the interests of the United States would not permit waiting for the decision on the protest. 31 U.S.C. § 3553(d)(2)(A) (Supp. IV 1986).

Taylor principally contends that the award to Crawford was inconsistent with the solicitation evaluation scheme and improper since Crawford's bid for the base period alone was

higher than that of Taylor. The protester maintains that the solicitation's period of performance clause indicated that the agency only intended a 3 month or less performance period as it stated that performance would be from February 1 until April 30 "unless sooner terminated." Further, Taylor argues that although section M of the solicitation regarding award of the contract stated that the award decision would include consideration of all options, the Federal Acquisition Regulation (FAR) clause, prescribed by § 52.214-10, included in the solicitation, allowed the contracting officer the flexibility to award the contract only for the 3-month base period.

Also, Taylor maintains that Crawford's bid was intentionally unbalanced in order to gain a competitive advantage from the 3-month base performance period. Taylor notes that Crawford bid significantly lower prices for the option months of May, June and July as compared to the base period even though, according to the protester, the option months are in the growing season and will require an increased workload since work under the contract consists mainly of grounds maintenance work on grasses, plants, shrubs and trees.

We find no merit to Taylor's contention that the bids were improperly evaluated. First, although the period of performance of the contract was stated in the solicitation as February through April, "unless sooner terminated," the solicitation schedule also included three, 1-month option periods on which firms were required to bid. Further, the clause at FAR § 52.214-10, cited by the protester which allows the agency to make partial awards, did not vary the requirement in section M that the low bid would be determined based on the base period and all options. While the reference to the performance period of 3 months may have been a little confusing, we think it is clear from the evaluation and bidding scheme set out in the solicitation that the option periods would be considered and we conclude that the contracting agency properly followed that scheme and determined the low bid by considering the base period and option prices. See Metal Trades, Inc., B-227915, Sept. 18, 1987, 87-2 CPD ¶ 277.

To the extent that Taylor is protesting that the evaluation scheme in the solicitation was unclear or should not have included the options, this issue is untimely. Our Bid Protest Regulations provide that protests based upon alleged improprieties in a solicitation that are apparent prior to

bid opening must be filed before that time. 4 C.F.R. § 21.2(a)(1) (1988). Here, Taylor did not protest the evaluation scheme in the solicitation before bid opening.<sup>1/</sup>

We also reject Taylor's contention that Crawford's bid was unbalanced and should have been rejected for that reason. There are two aspects of unbalanced bidding. The first involves a mathematical evaluation of the bid to determine whether each of its elements carries its proportionate share of the cost of the work plus profit, or whether the bid is based on nominal prices for some work and inflated prices for other work. The second aspect--material unbalancing--involves an assessment of the cost impact of a mathematically unbalanced bid. A bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the government. M&M Services, Inc., B-228717, Oct. 21, 1987, 87-2 CPD ¶ 382.

Here, with respect to mathematical unbalancing, Crawford's bid includes higher prices for the base period than the option months, and Taylor argues that the workload under the contract will in fact increase in the option months of May, June and July because those months are within the growing season. In response, Crawford and the Air Force argue that Crawford included start-up and equipment costs in its bid in the base period in order to assure that it would recover those costs. Although Taylor argues that the required maintenance services are labor intensive, the protester does not deny that the procurement involves some equipment and start-up costs for a firm like Crawford, which is not an incumbent. It is not unreasonable for a bidder to amortize costs over only the base period of a contract rather than over the base period and options which the government may not exercise. M&M Services, Inc., B-228717, supra. Moreover, the difference between Crawford's per month price for the base period, \$111,311, and its option month prices (89,416, 92,422 and 99,277) was not extreme (less than 20 percent). In our view, the higher per month prices in the base period of Crawford's bid do not lead to the conclusion that the bid was mathematically unbalanced. Since we have concluded that Crawford's bid was not mathematically unbalanced we need not consider the material unbalancing.

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<sup>1/</sup> Taylor also appears to argue that the Air Force improperly issued the IFB protested here while IFB No. 0018 was pending for the same type of work at the same location. This issue, which was also raised after bid opening, is also untimely. 4 C.F.R. § 21.2(a)(1).

In any event, we have been informed by the Air Force that before the base period ended, the May option was exercised under Crawford's contract. Under these circumstances, without the exercise of the second or third options, the award to Crawford resulted in the lowest overall cost to the government since the total cost of Crawford's contract will be \$423,351 (\$333,935 for the base period and \$89,416 for the first option) compared to the same contract based on Taylor's bid at \$424,000 (\$318,000 for the base period and \$106,000 for the first option). Thus, Crawford's bid was also not materially unbalanced.

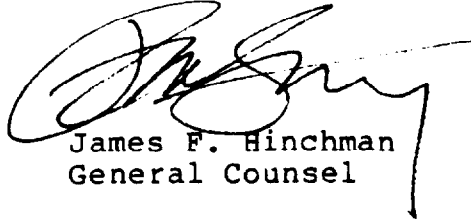
In its comments on the agency report, Taylor argues for the first time that contracting officials improperly attempted to obtain a 1-month extension of Taylor's previous contract. According to Taylor, in a phone conversation on January 24 and in meetings that occurred on January 25 and 26, contracting officials used "auction" techniques to try to convince Taylor to take a 1-month extension of its contract at a price under \$100,000. This allegation must independently satisfy our timeliness regulations, which require the filing of a protest within 10 working days after the basis of protest was known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2); Hollingsead International, B-227853, Oct. 19, 1987, 87-2 CPD ¶ 372. Since Taylor did not raise its contention regarding the January 24 phone conversation and the January 25 and 26 meetings until it filed its comments on the agency's report on March 28, this issue is untimely and will not be considered.

Finally, Taylor maintains that the Air Force improperly awarded the contract to Crawford and allowed performance of the contract while the protest was pending. The Competition in Contracting Act of 1984 requires a contracting agency to withhold award of a contract when it receives notice of a protest from this Office prior to the award. 31 U.S.C. § 3553(c)(1) (Supp. IV 1986). Here, although Taylor attempted to notify the Air Force of its protest before the award was made on January 27, Taylor did not protest to this Office until January 30. Thus, the award was already made when we notified the Air Force of the protest on January 30.

With respect to the decision to allow performance of the contract, the Air Force made the requisite determination that performance under the contract must commence notwithstanding the protest because of urgent and compelling circumstances significantly affecting the interests of the United States and properly provided notice of that determination to our Office. 31 U.S.C. § 3553(d)(2). Although Taylor challenges the Air Force's determination of

urgent and compelling circumstances, this Office does not review such a determination. See T&A Painting, Inc., B-229655.2, May 4, 1988, 88-1 CPD ¶ 435. In any event, since the award to Crawford was proper, Taylor was not prejudiced by the decision to allow contract performance.

The protest is dismissed in part and denied in part.



James F. Hinchman  
General Counsel